

Bill No. SB 232

Barcode 071490

591-1686-06

Proposed Committee Substitute by the Committee on Criminal Justice

1 A bill to be entitled

2 An act relating to lawful testing for alcohol,

3 chemical substances, or controlled substances;

4 amending s. 316.1932, F.S.; revising provisions

5 to notify a person that refusal to submit to a

6 lawful test of the person's breath, urine, or

7 blood is a misdemeanor, to conform to changes

8 made by the act; limiting information to be

9 made available to a person tested to determine

10 the amount of alcohol in the person's blood or

11 breath or the presence of chemical substances

12 or controlled substances; amending s. 316.1939,

13 F.S.; removing prior suspension as a condition

14 for the commission of a misdemeanor by refusal

15 to submit to a lawful test of breath, urine, or

16 blood; amending s. 327.352, F.S.; revising

17 provisions to notify a person that refusal to

18 submit to a lawful test of the person's breath,

19 urine, or blood is a misdemeanor, to conform to

20 changes made by the act; limiting information

21 to be made available to a person tested to

22 determine the amount of alcohol in the person's

23 blood or breath or the presence of chemical

24 substances or controlled substances; amending

25 s. 327.359, F.S.; removing prior suspension as

26 a condition for the commission of a misdemeanor

27 by refusal to submit to a lawful test of

28 breath, urine, or blood; providing an effective

29 date.

30

31 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraphs (a), (c), and (f) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1.a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and his or her~~

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~~driving privilege has been previously suspended for a prior~~
~~refusal to submit to a lawful test of his or her breath,~~
~~urine, or blood,~~ he or she commits a misdemeanor in addition
to any other penalties. The refusal to submit to a chemical or
physical breath test upon the request of a law enforcement
officer as provided in this section is admissible into
evidence in any criminal proceeding.

b. Any person who accepts the privilege extended by
the laws of this state of operating a motor vehicle within
this state is, by so operating such vehicle, deemed to have
given his or her consent to submit to a urine test for the
purpose of detecting the presence of chemical substances as
set forth in s. 877.111 or controlled substances if the person
is lawfully arrested for any offense allegedly committed while
the person was driving or was in actual physical control of a
motor vehicle while under the influence of chemical substances
or controlled substances. The urine test must be incidental to
a lawful arrest and administered at a detention facility or
any other facility, mobile or otherwise, which is equipped to
administer such tests at the request of a law enforcement
officer who has reasonable cause to believe such person was
driving or was in actual physical control of a motor vehicle
within this state while under the influence of chemical
substances or controlled substances. The urine test shall be
administered at a detention facility or any other facility,
mobile or otherwise, which is equipped to administer such test
in a reasonable manner that will ensure the accuracy of the
specimen and maintain the privacy of the individual involved.
The administration of a urine test does not preclude the
administration of another type of test. The person shall be
told that his or her failure to submit to any lawful test of

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1 his or her urine will result in the suspension of the person's
2 privilege to operate a motor vehicle for a period of 1 year
3 for the first refusal, or for a period of 18 months if the
4 driving privilege of such person has been previously suspended
5 as a result of a refusal to submit to such a test or tests,
6 and shall also be told that if he or she refuses to submit to
7 a lawful test of his or her urine ~~and his or her driving~~
8 ~~privilege has been previously suspended for a prior refusal to~~
9 ~~submit to a lawful test of his or her breath, urine, or blood,~~
10 he or she commits a misdemeanor in addition to any other
11 penalties. The refusal to submit to a urine test upon the
12 request of a law enforcement officer as provided in this
13 section is admissible into evidence in any criminal
14 proceeding.

15 2. The Alcohol Testing Program within the Department
16 of Law Enforcement is responsible for the regulation of the
17 operation, inspection, and registration of breath test
18 instruments utilized under the driving and boating under the
19 influence provisions and related provisions located in this
20 chapter and chapters 322 and 327. The program is responsible
21 for the regulation of the individuals who operate, inspect,
22 and instruct on the breath test instruments utilized in the
23 driving and boating under the influence provisions and related
24 provisions located in this chapter and chapters 322 and 327.
25 The program is further responsible for the regulation of blood
26 analysts who conduct blood testing to be utilized under the
27 driving and boating under the influence provisions and related
28 provisions located in this chapter and chapters 322 and 327.
29 The program shall:

30 a. Establish uniform criteria for the issuance of
31 permits to breath test operators, agency inspectors,

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instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

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k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the

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1 purpose of determining the alcoholic content of the blood or a
2 blood test for the purpose of determining the presence of
3 chemical substances or controlled substances as provided in
4 this section if there is reasonable cause to believe the
5 person was driving or in actual physical control of a motor
6 vehicle while under the influence of alcoholic beverages or
7 chemical or controlled substances and the person appears for
8 treatment at a hospital, clinic, or other medical facility and
9 the administration of a breath or urine test is impractical or
10 impossible. As used in this paragraph, the term "other medical
11 facility" includes an ambulance or other medical emergency
12 vehicle. The blood test shall be performed in a reasonable
13 manner. Any person who is incapable of refusal by reason of
14 unconsciousness or other mental or physical condition is
15 deemed not to have withdrawn his or her consent to such test.
16 A blood test may be administered whether or not the person is
17 told that his or her failure to submit to such a blood test
18 will result in the suspension of the person's privilege to
19 operate a motor vehicle upon the public highways of this state
20 and that a refusal to submit to a lawful test of his or her
21 blood, ~~if his or her driving privilege has been previously~~
22 ~~suspended for refusal to submit to a lawful test of his or her~~
23 ~~breath, urine, or blood,~~ is a misdemeanor. Any person who is
24 capable of refusal shall be told that his or her failure to
25 submit to such a blood test will result in the suspension of
26 the person's privilege to operate a motor vehicle for a period
27 of 1 year for a first refusal, or for a period of 18 months if
28 the driving privilege of the person has been suspended
29 previously as a result of a refusal to submit to such a test
30 or tests, and that a refusal to submit to a lawful test of his
31 or her blood, ~~if his or her driving privilege has been~~

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1 ~~previously suspended for a prior refusal to submit to a lawful~~
2 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.
3 The refusal to submit to a blood test upon the request of a
4 law enforcement officer is admissible in evidence in any
5 criminal proceeding.

6 (f)1. The tests determining the weight of alcohol in
7 the defendant's blood or breath shall be administered at the
8 request of a law enforcement officer substantially in
9 accordance with rules of the Department of Law Enforcement.
10 Such rules must specify precisely the test or tests that are
11 approved by the Department of Law Enforcement for reliability
12 of result and ease of administration, and must provide an
13 approved method of administration which must be followed in
14 all such tests given under this section. However, the failure
15 of a law enforcement officer to request the withdrawal of
16 blood does not affect the admissibility of a test of blood
17 withdrawn for medical purposes.

18 2.a. Only a physician, certified paramedic, registered
19 nurse, licensed practical nurse, other personnel authorized by
20 a hospital to draw blood, or duly licensed clinical laboratory
21 director, supervisor, technologist, or technician, acting at
22 the request of a law enforcement officer, may withdraw blood
23 for the purpose of determining its alcoholic content or the
24 presence of chemical substances or controlled substances
25 therein. However, the failure of a law enforcement officer to
26 request the withdrawal of blood does not affect the
27 admissibility of a test of blood withdrawn for medical
28 purposes.

29 b. Notwithstanding any provision of law pertaining to
30 the confidentiality of hospital records or other medical
31 records, if a health care provider, who is providing medical

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1 care in a health care facility to a person injured in a motor
2 vehicle crash, becomes aware, as a result of any blood test
3 performed in the course of that medical treatment, that the
4 person's blood-alcohol level meets or exceeds the
5 blood-alcohol level specified in s. 316.193(1)(b), the health
6 care provider may notify any law enforcement officer or law
7 enforcement agency. Any such notice must be given within a
8 reasonable time after the health care provider receives the
9 test result. Any such notice shall be used only for the
10 purpose of providing the law enforcement officer with
11 reasonable cause to request the withdrawal of a blood sample
12 pursuant to this section.

13 c. The notice shall consist only of the name of the
14 person being treated, the name of the person who drew the
15 blood, the blood-alcohol level indicated by the test, and the
16 date and time of the administration of the test.

17 d. Nothing contained in s. 395.3025(4), s. 456.057, or
18 any applicable practice act affects the authority to provide
19 notice under this section, and the health care provider is not
20 considered to have breached any duty owed to the person under
21 s. 395.3025(4), s. 456.057, or any applicable practice act by
22 providing notice or failing to provide notice. It shall not be
23 a breach of any ethical, moral, or legal duty for a health
24 care provider to provide notice or fail to provide notice.

25 e. A civil, criminal, or administrative action may not
26 be brought against any person or health care provider
27 participating in good faith in the provision of notice or
28 failure to provide notice as provided in this section. Any
29 person or health care provider participating in the provision
30 of notice or failure to provide notice as provided in this
31 section shall be immune from any civil or criminal liability

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1 and from any professional disciplinary action with respect to
2 the provision of notice or failure to provide notice under
3 this section. Any such participant has the same immunity with
4 respect to participating in any judicial proceedings resulting
5 from the notice or failure to provide notice.

6 3. The person tested may, at his or her own expense,
7 have a physician, registered nurse, other personnel authorized
8 by a hospital to draw blood, or duly licensed clinical
9 laboratory director, supervisor, technologist, or technician,
10 or other person of his or her own choosing administer an
11 independent test in addition to the test administered at the
12 direction of the law enforcement officer for the purpose of
13 determining the amount of alcohol in the person's blood or
14 breath or the presence of chemical substances or controlled
15 substances at the time alleged, as shown by chemical analysis
16 of his or her blood or urine, or by chemical or physical test
17 of his or her breath. The failure or inability to obtain an
18 independent test by a person does not preclude the
19 admissibility in evidence of the test taken at the direction
20 of the law enforcement officer. The law enforcement officer
21 shall not interfere with the person's opportunity to obtain
22 the independent test and shall provide the person with timely
23 telephone access to secure the test, but the burden is on the
24 person to arrange and secure the test at the person's own
25 expense.

26 4. Upon the request of the person tested, full
27 information concerning the results of the test taken at the
28 direction of the law enforcement officer shall be made
29 available to the person or his or her attorney. Full
30 information is limited to the following:

31 a. The type of test administered and the procedures

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followed.

b. The time of the collection of the blood or breath sample analyzed.

c. The numerical results of the test indicating the alcohol content of the blood and breath.

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

Section 2. Section 316.1939, Florida Statutes, is

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1 amended to read:

2 316.1939 Refusal to submit to testing; penalties.--

3 (1) Any person who has refused to submit to a chemical
4 or physical test of his or her breath, blood, or urine, as
5 described in s. 316.1932, ~~and whose driving privilege was~~
6 ~~previously suspended for a prior refusal to submit to a lawful~~
7 ~~test of his or her breath, urine, or blood, and:~~

8 (a) Who the arresting law enforcement officer had
9 probable cause to believe was driving or in actual physical
10 control of a motor vehicle in this state while under the
11 influence of alcoholic beverages, chemical substances, or
12 controlled substances;

13 (b) Who was placed under lawful arrest for a violation
14 of s. 316.193 unless such test was requested pursuant to s.
15 316.1932(1)(c);

16 (c) Who was informed that, if he or she refused to
17 submit to such test, his or her privilege to operate a motor
18 vehicle would be suspended for a period of 1 year or, in the
19 case of a second or subsequent refusal, for a period of 18
20 months;

21 (d) Who was informed that a refusal to submit to a
22 lawful test of his or her breath, urine, or blood, ~~if his or~~
23 ~~her driving privilege has been previously suspended for a~~
24 ~~prior refusal to submit to a lawful test of his or her breath,~~
25 ~~urine, or blood,~~ is a misdemeanor; and

26 (e) Who, after having been so informed, refused to
27 submit to any such test when requested to do so by a law
28 enforcement officer or correctional officer,

29
30 commits a misdemeanor of the first degree, punishable ~~and is~~
31 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. ~~The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood shall be admissible and shall create a rebuttable presumption of such suspension.~~

Section 3. Paragraphs (a), (c), and (e) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law

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1 enforcement officer who has reasonable cause to believe such
2 person was operating the vessel within this state while under
3 the influence of alcoholic beverages. The administration of a
4 breath test does not preclude the administration of another
5 type of test. The person shall be told that his or her failure
6 to submit to any lawful test of his or her breath will result
7 in a civil penalty of \$500~~7~~ and shall also be told that if he
8 or she refuses to submit to a lawful test of his or her breath
9 ~~and he or she has been previously fined for refusal to submit~~
10 ~~to any lawful test of his or her breath, urine, or blood, he~~
11 or she commits a misdemeanor in addition to any other
12 penalties. The refusal to submit to a chemical or physical
13 breath test upon the request of a law enforcement officer as
14 provided in this section is admissible into evidence in any
15 criminal proceeding.

16 2. Any person who accepts the privilege extended by
17 the laws of this state of operating a vessel within this state
18 is, by so operating such vessel, deemed to have given his or
19 her consent to submit to a urine test for the purpose of
20 detecting the presence of chemical substances as set forth in
21 s. 877.111 or controlled substances if the person is lawfully
22 arrested for any offense allegedly committed while the person
23 was operating a vessel while under the influence of chemical
24 substances or controlled substances. The urine test must be
25 incidental to a lawful arrest and administered at a detention
26 facility or any other facility, mobile or otherwise, which is
27 equipped to administer such tests at the request of a law
28 enforcement officer who has reasonable cause to believe such
29 person was operating a vessel within this state while under
30 the influence of chemical substances or controlled substances.
31 The urine test shall be administered at a detention facility

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1 or any other facility, mobile or otherwise, which is equipped
2 to administer such test in a reasonable manner that will
3 ensure the accuracy of the specimen and maintain the privacy
4 of the individual involved. The administration of a urine test
5 does not preclude the administration of another type of test.
6 The person shall be told that his or her failure to submit to
7 any lawful test of his or her urine will result in a civil
8 penalty of \$500, and shall also be told that if he or she
9 refuses to submit to a lawful test of his or her urine ~~and he~~
10 ~~or she has been previously fined for refusal to submit to any~~
11 ~~lawful test of his or her breath, urine, or blood,~~ he or she
12 commits a misdemeanor in addition to any other penalties. The
13 refusal to submit to a urine test upon the request of a law
14 enforcement officer as provided in this section is admissible
15 into evidence in any criminal proceeding.

16 (c) Any person who accepts the privilege extended by
17 the laws of this state of operating a vessel within this state
18 is, by operating such vessel, deemed to have given his or her
19 consent to submit to an approved blood test for the purpose of
20 determining the alcoholic content of the blood or a blood test
21 for the purpose of determining the presence of chemical
22 substances or controlled substances as provided in this
23 section if there is reasonable cause to believe the person was
24 operating a vessel while under the influence of alcoholic
25 beverages or chemical or controlled substances and the person
26 appears for treatment at a hospital, clinic, or other medical
27 facility and the administration of a breath or urine test is
28 impractical or impossible. As used in this paragraph, the term
29 "other medical facility" includes an ambulance or other
30 medical emergency vehicle. The blood test shall be performed
31 in a reasonable manner. Any person who is incapable of refusal

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1 by reason of unconsciousness or other mental or physical
2 condition is deemed not to have withdrawn his or her consent
3 to such test. Any person who is capable of refusal shall be
4 told that his or her failure to submit to such a blood test
5 will result in a civil penalty of \$500 and that a refusal to
6 submit to a lawful test of his or her blood, ~~if he or she has~~
7 ~~previously been fined for refusal to submit to any lawful test~~
8 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. The
9 refusal to submit to a blood test upon the request of a law
10 enforcement officer shall be admissible in evidence in any
11 criminal proceeding.

12 (e)1. The tests determining the weight of alcohol in
13 the defendant's blood or breath shall be administered at the
14 request of a law enforcement officer substantially in
15 accordance with rules of the Department of Law Enforcement.
16 However, the failure of a law enforcement officer to request
17 the withdrawal of blood does not affect the admissibility of a
18 test of blood withdrawn for medical purposes.

19 2. Only a physician, certified paramedic, registered
20 nurse, licensed practical nurse, other personnel authorized by
21 a hospital to draw blood, or duly licensed clinical laboratory
22 director, supervisor, technologist, or technician, acting at
23 the request of a law enforcement officer, may withdraw blood
24 for the purpose of determining its alcoholic content or the
25 presence of chemical substances or controlled substances
26 therein. However, the failure of a law enforcement officer to
27 request the withdrawal of blood does not affect the
28 admissibility of a test of blood withdrawn for medical
29 purposes.

30 3. The person tested may, at his or her own expense,
31 have a physician, registered nurse, other personnel authorized

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1 by a hospital to draw blood, or duly licensed clinical
 2 laboratory director, supervisor, technologist, or technician,
 3 or other person of his or her own choosing administer an
 4 independent test in addition to the test administered at the
 5 direction of the law enforcement officer for the purpose of
 6 determining the amount of alcohol in the person's blood or
 7 breath or the presence of chemical substances or controlled
 8 substances at the time alleged, as shown by chemical analysis
 9 of his or her blood or urine, or by chemical or physical test
 10 of his or her breath. The failure or inability to obtain an
 11 independent test by a person does not preclude the
 12 admissibility in evidence of the test taken at the direction
 13 of the law enforcement officer. The law enforcement officer
 14 shall not interfere with the person's opportunity to obtain
 15 the independent test and shall provide the person with timely
 16 telephone access to secure the test, but the burden is on the
 17 person to arrange and secure the test at the person's own
 18 expense.

19 4. Upon the request of the person tested, full
 20 information concerning the results of the test taken at the
 21 direction of the law enforcement officer shall be made
 22 available to the person or his or her attorney. Full
 23 information is limited to the following:

24 a. The type of test administered and the procedures
 25 followed.

26 b. The time of the collection of the blood or breath
 27 sample analyzed.

28 c. The numerical results of the test indicating the
 29 alcohol content of the blood and breath.

30 d. The type and status of any permit issued by the
 31 Department of Law Enforcement which was held by the person who

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performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

Section 4. Section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.--Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 327.352, ~~and who has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ and:

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(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test he or she is subject to a fine of \$500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, ~~if he or she has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer, commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 5. This act shall take effect October 1, 2006.